Sixty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1124

Introduced by

Industry, Business and Labor Committee

(At the request of the Insurance Commissioner)

A BILL for an Act to amend and reenact sections 26.1-10-01, 26.1-10-04, 26.1-10-05, and 26.1-10-07 of the North Dakota Century Code, relating to the standards and management of an insurer with an insurance holding company system and the confidential treatment of investigation and examination records of insurance holding companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-10-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is under the control of, or is under common control with, the person specified.
2. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided for in subsection 9 of section 26.1-10-04, that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such

determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

3. "Enterprise risk" means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer which, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or the insurer's insurance holding company system as a whole including anything that would cause the insurer's risk-based capital to fall into company action level as set forth in section 26.1-03.1-03 or would cause the insurer to be in hazardous financial condition as set forth in North Dakota Administrative Code section 45-03-13-01.

4. "Group capital calculation instructions" means the group capital calculation instructions adopted by the national association of insurance commissioners and as amended in accordance with the procedures adopted by the national association of insurance commissioners.

5. "Groupwide supervisor" means the regulatory official authorized to engage in conducting and coordinating groupwide supervision activities who is determined or acknowledged by the commissioner under section 26.1-10-06.2 to have sufficient significant contacts with the internationally active insurance group.

~~5.~~6. "Insurance holding company system" means two or more affiliated persons, one or more of which is an insurer.

~~6.~~7. "Insurer" has the same definition as provided in section 26.1-29-02, except the term does not include an agency, authority, or instrumentality of the United States or its possessions or a state or political subdivision of a state.

~~7.~~8. "Internationally active insurance group" means an insurance holding company system that includes an insurer registered under section 26.1-10-04, and meets the following criteria:

a. Premiums written in at least three countries;

b. The percentage of gross premiums written outside the United States is at least ten percent of the insurance holding company system's total gross written premiums; and

c. Based on a three-year rolling average, the total assets of the insurance holding company system are at least fifty billion dollars or the total gross written

premiums of the insurance holding company system are at least ten billion dollars.

~~8.~~9. "Liquidity stress test framework" means the national association of insurance commissioners liquidity stress test framework that includes a history of the association's development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, the liquidity stress test instructions, and reporting templates for a specific data year, as adopted and amended in accordance with the procedures adopted by the association.

10. "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, or an unincorporated organization or any similar entity or any combination of the foregoing acting in concert. The term does not include any joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.

11. "Scope criteria" means the designated exposure bases along with minimum magnitudes of those bases for the specified data year, used to establish a preliminary list of insurers considered scoped into the national association of insurance commissioners liquidity stress test framework for that data year.

~~9.~~12. "Securityholder" of a specified person means the owner of any security of the person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

~~10.~~13. "Subsidiary" of a specified person means an affiliate under the control of the person directly, or indirectly through one or more intermediaries.

~~11.~~14. "Voting security" includes any security convertible into or evidencing a right to acquire a voting security.

SECTION 2. AMENDMENT. Section 26.1-10-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-04. Registration of insurers.

1. Every insurer that is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or rule in the jurisdiction of its domicile which are substantially similar to those

contained in this section and section 26.1-10-05. Any insurer subject to registration under this section shall register within fifteen days after it becomes subject to registration, and annually thereafter by March first of each year for the previous calendar year unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any insurer authorized to do business in the state which is a member of an insurance holding company system not subject to registration under this section to furnish a copy of the registration statement, the summary specified in subsection 10 of section 26.1-10-04, or other information filed by the insurer with the insurance regulatory authority of the domiciliary jurisdiction.

2. Every insurer subject to registration shall file a registration statement with the commissioner on a form approved by the commissioner, which must contain current information about:

   a. The capital structure, general financial condition, ownership, and management of the insurer and any person in control of the insurer.

   b. The identity and relationship of every member of the insurance holding company system.

   c. The following agreements in force and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:

      (1) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates.

      (2) Purchases, sales, or exchange of assets.

      (3) Transactions not in the ordinary course of business.

      (4) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business.

      (5) All management agreements, service contracts, and all cost-sharing arrangements.

      (6) Reinsurance agreements.

(7) Dividends and other distributions to shareholders.

(8) Consolidated tax allocation agreements.

d. Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

e. If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. A financial statement may include an annual audited financial statement filed with the United States securities and exchange commission pursuant to the federal Securities Act of 1933, as amended, [15 U.S.C. 77a et seq.] or the federal Securities Exchange Act of 1934, as amended, [15 U.S.C. 78a et seq.] or the financial statement pursuant to this subdivision may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the United Sates securities and exchange commission.

f. Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

g. Statements that the insurer's board of directors is responsible for and supervises, relating to corporate governance and internal controls that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor.

h. Any other information required by the commissioner by rule.

3. No information need be disclosed on the registration statement filed pursuant to subsection 2 if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, or guarantees involving one-half of one percent or less of an insurer's admitted assets as of December thirty-first next preceding are not material for purposes of this section. <u>The definition of materiality provided in this subsection does not apply for purposes of the group capital calculation or the liquidity stress test framework.</u>

4. In addition to the annual filing requirement under subsection 1, each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms approved by the commissioner within fifteen days after the end of the month in which it learns of each change or addition; provided, however, that subject to subsections 7, 8, and 9 of section 26.1-10-05, each registered insurer shall report all dividends and other distributions to shareholders within five business days following the declaration and no less than ten business days prior to payment thereof.
5. The commissioner shall terminate the registration of any insurer that demonstrates it no longer is a member of an insurance holding company system.
6. The commissioner may require or allow two or more affiliated insurers subject to registration to file a consolidated registration statement.
7. The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection 1 to file all information and material required to be filed under this section.
8. This section does not apply to any insurer, information, or transaction if and to the extent excepted by the commissioner by rule or order.
9. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. A disclaimer of affiliation is deemed to have been granted unless the commissioner, within thirty days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which must be granted. The disclaiming party is relieved of its duty to register under this section if approval of the disclaimer has been granted by the commissioner or if the disclaimer is deemed to have been approved.
10. All registration statements must contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

11. Any person within an insurance holding company system subject to registration must provide complete and accurate information to an insurer, when the information is reasonably necessary to enable the insurer to comply with the provisions of this chapter.

12. The ultimate controlling person of every insurer subject to registration shall file an annual enterprise risk report. To the best of the ultimate controlling person's knowledge and belief, the report must identify the material risks within the insurance holding company system which could pose enterprise risk to the insurer. The report must be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the financial analysis handbook adopted by the national association of insurance commissioners.

13. Except as provided in subsection 14, the ultimate controlling person of each insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the lead state commissioner. The report must be completed in accordance with the national association of insurance commissioners group capital calculation instructions, which may permit the lead state commissioner to allow a controlling person that is not the ultimate controlling person to file the group capital calculation. The report must be filed with the lead state commissioner of the insurance holding company system as determined by the commissioner in accordance with the financial analysis handbook procedures adopted by the national association of insurance commissioners.

14. An insurance holding company system is exempt from filing the group capital calculation if the insurance holding company system meets any of the criteria described below.

    a. An insurance holding company system that has only one insurer within its holding company structure, only writes business, is only licensed in its domestic state, and assumes no business from any other insurer.

    b. If a system is required to perform a group capital calculation specified by the United States federal reserve board, the lead state commissioner shall request the calculation from the federal reserve board under the terms of information sharing agreements in effect. If the federal reserve board cannot share the

calculation with the lead state commissioner, the insurance holding company system is not exempt from the group capital calculation filing.

c. An insurance holding company system that has a non-United States groupwide supervisor located within a reciprocal jurisdiction as set forth in subsection 7 of section 26.1-31.2-01 which recognizes the United States state regulatory approach to group supervision and group capital.

d. An insurance holding company system that:

(1) Provides information to the lead state that meets the requirements for accreditation under the national association of insurance commissioners financial standards and accreditation program, either directly or indirectly through the groupwide supervisor, who has determined the information is satisfactory to allow the lead state to comply with the national association of insurance commissioners group supervision approach, as detailed in the national association of insurance commissioners financial analysis handbook; and

(2) Has a non-United States groupwide supervisor that is not in a reciprocal jurisdiction which recognizes and accepts, as specified by the commissioner by rule, the group capital calculation as the worldwide group capital assessment for United States insurance groups that operate in that jurisdiction.

e. Notwithstanding subdivisions c and d, a lead state commissioner shall require the group capital calculation for United States operations of any non-United States based insurance holding company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

f. Notwithstanding subdivisions a through d, the lead state commissioner may exempt the ultimate controlling person from filing the annual group capital calculation or accept a limited group capital filing or report in accordance with criteria as specified by the commissioner by rule.

g. If the lead state commissioner determines an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the group capital calculation under this section, the insurance holding company system shall file the group capital calculation at the next annual filing date, unless an extension is provided by the lead state commissioner based on reasonable grounds shown.

15. The ultimate controlling person of every insurer subject to registration and scoped into the national association of insurance commissioners liquidity stress test framework shall file the results of a specific year's liquidity stress test. The results must be filed with the lead state insurance commissioner of the insurance holding company system as determined by the financial analysis handbook procedures adopted by the national association of insurance commissioners.

a. The national association of insurance commissioners liquidity stress test framework includes scope criteria applicable to a specific data year. The scope criteria are reviewed at least annually by the financial stability task force or its successor. A change to the national association of insurance commissioners liquidity stress test framework or to the data year for which the scope criteria are to be measured is effective on January first of the year following the calendar year when the change is adopted. An insurer that meets at least one threshold of the scope criteria is considered scoped into the national association of insurance commissioners liquidity stress test framework for the specified data year unless the lead state insurance commissioner, in consultation with the national association of insurance commissioners financial stability task force or its successor, determines the insurer should not be scoped into the framework for that data year. An insurer that does not trigger at least one threshold of the scope criteria is considered scoped out of the liquidity stress test framework for the specified data year, unless the lead state insurance commissioner, in consultation with the national association of insurance commissioners financial stability task force or its successor, determines the insurer should be scoped into the framework for that data year.

b. To avoid having insurers scoped in and out of the national association of insurance commissioners liquidity stress test framework on a frequent basis, the lead state insurance commissioner, in consultation with the financial stability task force or its successor, shall assess this concern as part of the determination for an insurer.

c. The performance of, and filing of the results from, a specific year's liquidity stress test must comply with the national association of insurance commissioners liquidity stress test framework's instructions and reporting templates for that year and any lead state insurance commissioner determinations, in consultation with the financial stability task force or its successor, provided within the framework.

~~13.~~16. The failure to file a registration statement or any summary of the registration statement or enterprise risk filing required by this section within the time specified for the filing is a violation of this section.

SECTION 3. AMENDMENT. Section 26.1-10-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-05. Standards and management of an insurer with an insurance holding company system.

1. Transactions within an insurance holding company system to which an insurer subject to registration is a party are subject to the following standards:
   a. The terms must be fair and reasonable.
   b. Agreements for cost-sharing services and management must include provisions as required by rules adopted by the commissioner.
   c. The books, accounts, and records of each party must clearly and accurately disclose the precise nature and details of the transactions, including that accounting information that is necessary to support the reasonableness of the charges or fees to the respective parties.
   d. The insurer's surplus as regards to policyholders following any dividends or distributions to shareholder affiliates must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.
   e. Charges or fees for services performed must be reasonable.

f. Expenses incurred and payment received must be allocated to the insurer in conformity with statutory accounting practices consistently applied.

g. If an insurer subject to this chapter is deemed by the commissioner to be in a hazardous financial condition as defined by North Dakota Administrative Code chapter 45-03-13 or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, the commissioner may require the insurer to secure and maintain a deposit, held by the commissioner, or a bond, as determined by the insurer at the insurer's discretion, for the protection of the insurer for the duration of the contracts or agreements, or the existence of the condition for which the commissioner is required to secure and maintain the deposit or the bond. In determining whether a deposit or a bond is required, the commissioner must consider whether concerns exist with respect to the affiliated person's ability to fulfill the contracts or agreements if the insurer were to be put into liquidation. Once the insurer is deemed to be in a hazardous financial condition or a condition that would be grounds for supervision, conservation or a delinquency proceeding, and a deposit or bond is necessary, the commissioner may determine the amount of the deposit or bond, not to exceed the value of the contracts or agreements in any one year, and whether such deposit or bond should be required for a single contract, multiple contracts, or a contract only with specific persons.

h. All records and data of the insurer held by an affiliate are and remain the property of the insurer, are subject to the control of the insurer, are identifiable, and are segregated or readily capable of segregation, at no additional cost to the insurer, from all other persons' records and data. This includes all records and data that are otherwise the property of the insurer, in whatever form maintained, including claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, financial records, or similar records within the possession, custody or control of the affiliate. At the request of the insurer, the affiliate shall permit the receiver to obtain a complete set of all records of any type that pertain to the insurer's business, obtain access to the operating systems on which the data is maintained, obtain the software

that runs those systems either through assumption of licensing agreements or otherwise, and restrict the use of the data by the affiliate if it is not operating the insurer's business. The affiliate shall provide a waiver of any landlord lien or other encumbrance to give the insurer access to all records and data in the event of the affiliate's default under a lease or other agreement.

i. Premiums or other funds belonging to the insurer which are collected by or held by an affiliate are the exclusive property of the insurer and are subject to the control of the insurer. Any right of offset in the event an insurer is placed into receivership shall be subject to chapter 26.1-06.1.

2. The following transactions involving a domestic insurer and any person in its insurance holding company system, including an amendment or modification of an affiliate agreement previously filed pursuant to this section, which is subject to any materiality standards contained in subdivisions a through g, may not be entered unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty days prior thereto, or a shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period. The notice for an amendment or modification must include the reason for the change and the financial impact on the domestic insurer. Within thirty days after a termination of a previously filed agreement, informal notice must be reported to the commissioner for determination of the type of filing required, if any.

a. Sales, purchases, exchanges, loans, or extensions of credit, or investments provided the transactions are equal to or exceed:

(1) With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders as of December thirty-first next preceding.

(2) With respect to life insurers, three percent of the insurer's admitted assets as of December thirty-first next preceding.

b. Loans or extensions of credit to any person that is not an affiliate, if the insurer makes loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make

investments in any affiliate of the insurer making the loans or extensions of credit provided the transactions are equal to or exceed:

(1) With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders as of December thirty-first next preceding.

(2) With respect to life insurers, three percent of the insurer's admitted assets as of December thirty-first next preceding.

c. Reinsurance agreements or modifications thereto, including:

(1) All reinsurance pooling agreements.

(2) Agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years, equals or exceeds five percent of the insurer's surplus as regards policyholders, as of December thirty-first next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer.

d. All management agreements, service contracts, tax allocation agreements, guarantees, and cost-sharing arrangements.

e. Any guarantee made by a domestic insurer; however, a guarantee that is quantifiable as to amount is not subject to the notice requirements of this subsection unless the guarantee exceeds the lesser of one-half of one percent of the insurer's admitted assets or ten percent of surplus as regards policyholders as of December thirty-first next preceding. Additionally, all guarantees that are not quantifiable as to amount are subject to the notice requirements of this subsection.

f. Any direct or indirect acquisition or investment in a person that controls the insurer or in an affiliate of the insurer in an amount that, together with its present holdings in such investments, exceeds two and one-half percent of the insurer's surplus to policyholders. A direct or indirect acquisition or investment in a

subsidiary acquired pursuant to section 26.1-10-02, or authorized under any other section of this chapter, or in a nonsubsidiary insurance affiliate that is subject to this chapter, is exempt from this requirement.

g. Any material transactions, specified by rule, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing in this subsection may be deemed to authorize or permit any transactions which, in the case of an insurer which is not a member of the same insurance holding company system, would be otherwise contrary to law.

3. A domestic insurer may not enter transactions that are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that the separate transactions were entered over any twelve-month period for that purpose, the commissioner may exercise the commissioner's authority under the penalty sections of this chapter.

4. The commissioner, in reviewing transactions pursuant to subsection 2, shall consider whether the transactions comply with the standards set forth in subsection 1 and whether they may adversely affect the interests of the policyholders.

5. The commissioner must be notified within thirty days of any investment of the domestic insurer in any one corporation if the total investment in that corporation by the insurance holding company system exceeds ten percent of the corporation's voting securities.

6. For purposes of this chapter, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs, the following factors, among others, must be considered:

a. The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.

b. The extent to which the insurer's business is diversified among the several lines of insurance.

c. The number and size of risks insured in each line of business.

d. The extent of the geographical dispersion of the insurer's insured risks.

e. The nature and extent of the insurer's reinsurance program.

f. The quality, diversification, and liquidity of the insurer's investment portfolio.

g. The recent past and projected future trend in the size of the insurer's investment portfolio.

h. The surplus as regards policyholders maintained by other comparable insurers.

i. The adequacy of the insurer's reserves.

j. The quality and liquidity of investments in affiliates. The commissioner may treat the investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment the investment so warrants.

7. A domestic insurer may not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty days after the commissioner has received notice of the declaration thereof and has not within that period disapproved the payment, or until the commissioner has approved the payment within the thirty-day period.

8. For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, when the fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the lesser of:

a. Ten percent of the insurer's surplus as regards policyholders as of December thirty-first next preceding; or

b. The net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the company is not a life insurer, not including realized capital gains, for the twelve-month period ending December thirty-first next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

9. In determining whether a dividend or distribution is extraordinary under subsection 8, an insurer other than a life insurer may carry forward net income from the previous two calendar years which has not already been paid out as dividends. This carry-forward must be computed by taking the net income from the second and third preceding

calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

10. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval, and the declaration confers no rights upon shareholders until:
    a. The commissioner has approved the payment of the dividend or distribution; or
    b. The commissioner has not disapproved the payment within the thirty-day period referred to in subsection 7.

11. An affiliate that is a party to an agreement or contract with a domestic insurer that is subject to subdivision d of subsection 2 shall be subject to the jurisdiction of any supervision, seizure, conservatorship, or receivership proceedings against the insurer and to the authority of any supervisor, conservator, rehabilitator, or liquidator for the insurer appointed under chapters 26.1-06.1 and 26.1-06.2 for the purpose of interpreting, enforcing, and overseeing the affiliate's obligations under the agreement or contract to perform services for the insurer that are:
    a. An integral part of the insurer's operations, such as management, administrative, accounting, data processing, marketing, underwriting, claims handling, investment, or any other similar functions; or
    b. Essential to the insurer's ability to fulfill its obligations under insurance policies.

12. The commissioner may require that an agreement or contract under subdivision d of subsection 2 for the provision of services in subdivision a and b specify the affiliate consents to the jurisdiction as set forth in subsection 11.

SECTION 4. AMENDMENT. Section 26.1-10-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-07. Confidential treatment.

1. Any document, material, or other information in the possession or control of the North Dakota insurance department which is obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 26.1-10-06 and all information reported pursuant to subdivisions l and m of subsection 2 of section 26.1-10-03 and sections 26.1-10-04 and 26.1-10-05 is confidential and privileged, not subject to section 44-04-18, not subject to subpoena,

and not subject to discovery or admissible in evidence in any private civil action. However, the commissioner may use the document, material, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner may not otherwise make the document, material, or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates that would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in any manner the commissioner deems appropriate.

a. For purposes of the information reported and provided under subsections 13 and 14 of section 26.1-10-04, the commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the federal reserve board or any United States groupwide supervisor.

b. For purposes of the information reported and provided under subsection 15 of section 26.1-10-04, the commissioner shall maintain the confidentiality of the liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the federal reserve board and non-United States groupwide supervisors.

2. Neither the commissioner nor any person that received any document, material, or other information while acting under the authority of the commissioner or with whom such document, material, or other information is shared under this chapter is permitted or required to testify in any private civil action concerning any confidential document, material, or information subject to subsection 1.

3. To assist in the performance of the commissioner's duties:

a. If the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information, and has verified in writing the legal authority to maintain confidentiality, the commissioner may share any document, material, or other information, including the confidential and privileged

document, material, or information subject to subsection 1, including proprietary and trade secret documents and materials, with any other state, federal, and international regulatory agency, the national association of insurance commissioners ~~and its affiliates and subsidiaries~~, any third-party consultant designated by the commissioner, and any state, federal, or international law enforcement authority, including members of any supervisory college described in section 26.1-10-06.1;

b. Notwithstanding subdivision a, the commissioner may share a confidential and privileged document, material, or information reported under subsection 12 of section 26.1-10-04 only with a commissioner of a state having statutes or regulations substantially similar to subsection 1 and who has agreed in writing not to disclose the information;

c. The commissioner may receive any document, material, or information, including any otherwise confidential and privileged document, material, or information, including propriety and trade secret information, from the national association of insurance commissioners and its affiliates and subsidiaries and from any regulatory and law enforcement official of other foreign or domestic jurisdiction, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding the document, material, or information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

d. The commissioner shall enter a written agreement with the national association of insurance commissioners and any third-party consultant designated by the commissioner governing sharing and use of information provided under this chapter consistent with this subsection and which must:

(1) Specify procedures and protocols regarding the confidentiality and security of information shared with the national association of insurance commissioners ~~and its affiliates and subsidiaries~~or any third-party consultant designated by the commissioner under this chapter, including procedures and protocols for sharing by the national association of insurance commissioners with any other state, federal, or international regulator~~;~~. The

written agreement must provide the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or other information and has verified in writing the legal authority to maintain such confidentiality;

(2) Specify ownership of information shared with the national association of insurance commissioners ~~and its affiliates and subsidiaries~~or a third-party consultant under this chapter remains with the commissioner, and the national association of insurance commissioner's or a third-party consultant's, as designated by the commissioner, use of the information is subject to the direction of the commissioner;

(3) Excluding documents, materials, or information reported under subsections 13 and 14 of section 26.1-10-04, prohibit the national association of insurance commissioners or a third-party consultant designated by the commissioner from storing the information shared under this chapter in a permanent database after the underlying analysis is complete;

~~(3)~~(4) Require prompt notice to be given to an insurer if the insurer's confidential information in the possession of the national association of insurance commissioners or a third-party consultant designated by the commissioner under this chapter is subject to a request or subpoena to the national association of insurance commissioners or a third-party consultant designated by the commissioner for disclosure or production; ~~and~~

~~(4)~~(5) Require the national association of insurance commissioners ~~and its affiliates and subsidiaries~~or third-party consultants designated by the commissioner to consent to intervention by an insurer in any judicial or administrative action in which the national association of insurance commissioners ~~and its affiliates and subsidiaries~~or a third-party consultant designated by the commissioner may be required to disclose confidential information about the insurer shared with the national association of insurance commissioners ~~and its affiliates and subsidiaries~~or a third-party consultant designated by the commissioner under this chapter~~.~~; and

(6) Documents, materials, or information reported under subsection 13 and 14 of section 26.1-10-04, in the case of an agreement involving a third-party consultant, provide for notification of the identity of the consultant to the applicable insurer.

4. The sharing of information by the commissioner under this chapter does not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of this chapter.

5. Waiver of any applicable privilege or claim of confidentiality in any document, material, or information may not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection 3.

6. Any document, material, or other information in the possession or control of the national association of insurance commissioners or a third-party consultant designated by the commissioner under this chapter is confidential and privileged, not subject to section 44-04-18, not subject to subpoena, and not subject to discovery or admissible in evidence in any private civil action.

7. The group capital calculation and resulting group capital ratio required under subsections 13 and 14 of section 26.1-10-04 and the liquidity stress test along with its results and supporting disclosures required under subsection 15 of section 26.1-10-04, are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally.

8. Except as otherwise required under this chapter, the making, publishing, disseminating, circulating or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station or any electronic means of communication available to the public, or in any other way as an advertisement, announcement or statement containing a representation or statement that would be misleading is prohibited when made regarding:

a. A group capital calculation;

b. A group capital ratio;

c. Liquidity stress test results;

d. Supporting disclosures for the liquidity stress test of any insurer or any insurer group; or

e. Any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business.

9. Notwithstanding subsection 8, if any written publication contains a materially false statement and the insurer demonstrates to the commissioner with substantial proof the falsity or inappropriateness of the statement, the insurer may publish announcements in a written publication, provided the sole purpose of the announcement is to rebut the materially false statement. For this subsection to apply, the existence of any materially false statement in a written publication must relate to at least one of the following subject areas:

a. A group capital calculation;

b. A resulting group capital ratio;

c. An inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio;

d. A liquidity stress test result;

e. Supporting disclosures for the liquidity stress test; or

f. An inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures.